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injury after seeing the traveler, states no cause of action, because it fails to state facts showing any duty on the part of the company.

3. Same.—A declaration, in an action against a railroad company for injuries to a traveler in a collision with an engine operated on a street, which sets out the ordinance making it unlawful for trains to be run at a greater speed than 5 miles per hour, and requiring every locomotive to be furnished with a bell, which shall be rung during the time the locomotive is in motion, and which alleges a violation of the ordinance as the proximate cause of the injury, sets out facts sufficient to inform the company of the existence of the duty which it is claimed was neglected, and which negligence caused the injury complained of.

NORFOLK & W. RY. CO. *v.* STEGALL'S ADM'X.*

June 21, 1906.

[54 S. E. 19.]

1. Death—Action—Pleading.—Where, in an action for death, the first count of the declaration failed to set forth the circumstances attending the death of plaintiff's intestate in such a manner as to show that the relations existing between the parties imposed a duty on defendant, the negligent breach of which was the proximate cause of intestate's death, it was fatally defective.

[Ed. Note.—For cases in point, see vol. 15, Cent. Dig. Death, §§ 60, 61.]

2. Pleading—Demurrer to Declaration—Several Counts.—Where a declaration containing more than one count is demurred to as a whole, the demurrer should be overruled if any of the counts are good.

[Ed. Note.—For cases in point, see vol. 39, Cent. Dig. Pleading, §§ 486-490.]

3. Same.—Where there are two or more counts in a declaration or a single count containing several breaches, some well and others ill assigned or containing a demand of several matters, divisible in their nature, some of which are well and others ill claimed, and a demurrer is filed to the whole declaration and to each count thereof or to the several breaches assigned, the demurrer must be sustained to the invalid counts or breaches and overruled as to the others.

[Ed. Note.—For cases in point, see vol. 39, Cent. Dig. Pleading, §§ 486-490.]

4. Railroads—Persons on Track—Duty to Licensee.—A railroad company does not owe the duty of prevision to a bare licensee on its tracks, nor does it owe him the duty of employing competent servants

*This case is the subject of a learned article in this number of the "Register," (ante, p. 419) entitled, "Doctrine in Virginia as to the Duty of a Railroad Company to Licensees On Its Tracks."

to manage its trains, or to run them in any particular manner, or a particular rate of speed.

[Ed. Note.—For cases in point, see vol. 41, Cent. Dig. Railroads, §§ 1235-1237.]

5. Same—Declaration.—Where, in an action against a railroad company for death of a bare licensee on the track, the declaration merely alleged that defendant was negligent in pushing its train of cars in front of the engine across the trestle without any lookout on the end of the cars and at a rate of speed forbidden by the city ordinances, the proximate cause of deceased's death was thereby attributed to the combined effect of such breaches, and defendant being under no obligation to deceased, except not to operate its cars in violation of the ordinance, the declaration was insufficient:

6. Negligence—Pleading—Duty.—In an action founded on defendant's negligence, the declaration must directly and positively allege, otherwise than by mere recital, what duty was owing by defendant to plaintiff, the failure to discharge which caused the injury complained of and its breach, or aver such facts as will show the existence of the duty and its breach.

[Ed. Note.—For cases in point, see vol. 37, Cent. Dig. Negligence, §§ 174, 175, 182-184.]

SANDS *v.* STAGG et al.

June 14, 1906.

[54 S. E. 21.]

1. Appeal—Assignments of Error—Time—Reply Brief.—An assignment of error, made for the first time in appellant's reply brief, will not ordinarily be considered, for failure to comply with Code 1904, § 3464, providing that a petition for appeal, etc., shall assign errors and shall not be presented until certified by counsel.

[Ed. Note.—For cases in point, see vol. 2, Cent. Dig. Appeal and Error, § 1960; vol. 3, Cent. Dig. Appeal and Error, § 3097.]

2. Vendor and Purchaser—Right to Conveyance—Liens.—Where a vendee, for the purpose of erecting a building on the premises to be conveyed, borrowed money from the vendor with the understanding that the loan should be repaid before the property was conveyed, and the houses in process of construction, two of which were to belong to the vendor under the contract of sale, were burdened with mechanics' liens, the vendor was entitled to repayment of the sum advanced and to have his two houses and lots freed from the liens before being compelled to convey the balance of the property to the vendee.

3. Same—Transfer by Purchaser.—R. contracted to erect five houses on certain property belonging to M., and for the furnishing of the material and doing the work and completing two of the houses M.